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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/565,482

01/20/2006

Eric Favre

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EXAMINER

ALEXANDER, REGINALD

ART UNIT

PAPER NUMBER

3742

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/565,482	<b>Applicant(s)</b> FAVRE ET AL.	
	<b>Examiner</b> Reginald L. Alexander	<b>Art Unit</b> 3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>1/20/06</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Drawings***

The subject matter of this application admits of illustration by a drawing to facilitate understanding of the invention. Applicant is required to furnish a drawing under 37 CFR 1.81(c). No new matter may be introduced in the required drawing. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Favre.

There is disclosed in Favre a device for preparing a beverage, comprising a capsule carrier 9 comprising a bottom wall, an intermediate bottom wall in the form of a filtering wall 10 having a plurality of perforating spikes 22 and outflow orifices (col. 5, lines 47-52), and a lower cavity portion arranged between the filtering wall and the bottom wall wherein the bottom wall comprises an outflow channel 24 surrounded by lips which protrude upwards and have openings or slots 27 for flow of beverage out from the capsule carrier.

Claims 13, 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Rodth.

There is disclosed in Rodth a capsule for the preparation of a beverage, comprising a shell which is substantially rigid and which comprises a side wall 13 and a bottom wall 12 to form a container in which a product to be brewed is contained, the shell further comprising an annular flange 14, the capsule further comprising a flexible membrane 25 bonded to the annular flange, the shell and membrane being made from a polymer and the flexible membrane being made from a multiple layer sheet 15, 16.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rodth in view of Halliday et al.

Halliday, at paragraphs 0080 and 0088, disclose that it is known in the art to construct the shell 10 and flexible membrane 5 of a brewing capsule, of polypropylene.

It would have been obvious to one skilled in the art to modify the shell and membrane taught in Rodth and construct them of polypropylene as taught by Halliday, in order to have a more durable construction with a reduced cost.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rodth.

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Rodth, while disclosing a flexible membrane constructed of three layers, fails to disclose the use of at least five layers.

It would have been obvious to one skilled in the art to use at least five layers, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

Claims 1, 2, 4, 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beaulieu et al. in view of Fond et al. '987.

There is disclosed in Beaulieu a device for preparing a beverage from a capsule 50 containing a product to be brewed, the capsule including a flexible membrane 52 capable of significant elastic deformation (see fig. 6B), wherein the membrane is perforated and hot water injected onto the membrane and into the capsule and the membrane flexed in the direction of the hot water flow so as to compress the product within the capsule.

Fond discloses the use of plural conical perforating members 44, 13 and an injection head, wherein a plurality of holes are provided to an outer membrane of a beverage product capsule and hot water is provided to the interior of the capsule by application to the membrane and through the apertures.

It would have been obvious to one skilled in the art to provide the device of Beaulieu with the injection head and plurality of perforating members taught in Fond, in order to allow for a more even distribution of hot water to the product within the capsule.

The prior art appears to meet all of the claimed method steps (perforating a plurality of holes and injecting water). In regards to the size of the holes and its

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dependence upon the compactness of the product within the capsule, applicant fails to positively recite this as a method step for preparing and beverage. Additionally, it is apparent that the prior art would satisfy such a limitation if a proper amount of product were provided to the capsule. And the product amount is an obvious matter of design choice to a user.

Claims 3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beaulieu et al. in view of Fond et al. '987 as applied to claims above, and further in view of Park.

Park discloses an injection head 130 which has a shape which is convex. The convex surface contacts the brewing product and provides compaction thereof before the distribution of hot water thereto.

It would have been obvious to one skilled in the art to provide the injection assembly of Beaulieu, as modified by Fond, with the convex injection head, in order to improve the compaction of the brewing product with the injection head surface and not just the flexing of the membrane.

Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fond et al. '987 in view of Park.

Fond discloses a beverage preparation device, comprising an injection head comprising a perforating surface provided with a plurality of perforating spikes 44, 13, and at least one water channel 42 arranged to supply hot water onto the perforating surface.

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Park discloses an injection head 130 which has a shape which is convex. The convex surface contacts the brewing product and provides compaction thereof before the distribution of hot water thereto.

It would have been obvious to one skilled in the art to modify the injection head assembly of Fond, with that taught in Park and provide a convex perforating surface, in order to improve the compaction of the brewing product and even distribution of hot water to the product.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fond et al. '987 in view of Park as applied to claims 8 and 9 above, and further in view of Favre.

Fond further includes a capsule carrier comprising a bottom wall 4, an intermediate bottom wall in the form of a filtering wall 2 having a plurality of perforating spikes and outflow orifices 20, and a lower cavity portion arranged between the filtering wall and the bottom wall wherein the bottom wall comprises an outflow channel 21.

Favre, as discussed above, discloses an outflow channel 24 surrounded by lips which protrude upwards.

It would have been obvious to one skilled in the art to provide the outflow channel of Fond, as modified by Park, with the surrounding lips taught in Favre, in order to allow for a brief stepping time of the beverage before it is dispensed to a beverage cup.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Fassano et al., Bambi, Fond et al., Hufnagl and DeLonghi are cited for their disclosure of the state of the art.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 571-272-1395. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on 571-272-4780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Reginald L. Alexander/  
Primary Examiner  
Art Unit 3742